

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oziell Sawyer III,

Plaintiff,

v.

City of Oakland; and Does 1-10,

Defendants.

Case No.

**Complaint for Injunctive Relief
and Damages for Violations of:**

1. Title II of the Americans with Disabilities Act, 42 U.S.C. §12132 *et seq.*; and
2. California's Disabled Persons Act, Cal. Civ. Code § 54.1 *et seq.*

INTRODUCTION

1. Plaintiff Oziell Sawyer III ("Plaintiff") brings the instant action to enjoin Defendant City of Oakland and Does 1-10, (collectively "Defendants") from discriminating against him on the basis of his disability in the operation of its sidewalks and curbs in violation of federal and state anti-discrimination statutes.

1 2. Plaintiff alleges that Defendants have failed to ensure that its
2 sidewalks and curbs are accessible to and usable by him, as an individual with
3 disabilities.

4 3. Plaintiff also alleges that Defendants have failed to comply with
5 its obligation to cut curbs when constructing and/or altering streets.

6 4. Finally, Plaintiff alleges that Defendants have failed and refused
7 to grant his request that they cut curbs in his community as a reasonable
8 modification for his disabilities.

9 5. As a direct and proximate result of the City's discriminatory acts
10 and omissions, Plaintiff has been and will continue to be denied full and equal
11 access to the City's service programs, activities, and to his local community,
12 all to his damage.

13 6. Through this lawsuit, Plaintiff seeks an injunction compelling
14 Defendants to undertake the steps required to provide him full and equal
15 access to the sidewalks in his community as required by law.

16 7. Plaintiff also seeks damages and reasonable attorneys' fees, costs
17 and litigation expenses for enforcing his civil rights.

18 19 **JURISDICTION & VENUE**

20 8. This Court has subject matter jurisdiction over this action
21 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the
22 ADA.

23 9. Pursuant to pendent jurisdiction, an attendant and related cause
24 of action arising from the same facts is also brought under the Disabled
25 Persons Act, Cal. Civ. Code § 54 *et seq.*, which expressly incorporates the
26 ADA. Cal. Civ. Code § 54(c).

27 10. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and
28 is founded on the fact that the real property which are the subject of this action

1 is located in this district and that Plaintiff's causes of action arose in this
2 district.

3 4 **PARTIES**

5 11. Plaintiff Oziell Sawyer III is, and at all times relevant herein was,
6 an individual and resident of California.

7 12. Defendant City of Oakland ("City") is, and at all times relevant
8 herein was, a municipal corporation and political subdivision of the State of
9 California.

10 13. Plaintiff is currently unaware of the true identities of DOES 1-
11 10, inclusive, and will seek leave to amend when their true names, capacities,
12 connections, and responsibilities are ascertained.

13 14. Plaintiff is informed and believes that each of the Defendants is
14 the agent, ostensible agent, alter ego, master, servant, trustor, trustee,
15 employer, employee, representative, franchiser, franchisee, lessor, lessee,
16 joint venturer, parent, subsidiary, affiliate, related entity, partner, and/or
17 associate, or such similar capacity, of each of the other Defendants, and was
18 at all times acting and performing, or failing to act or perform, within the
19 course and scope of such similar aforementioned capacities, and with the
20 authorization, consent, permission or ratification of each of the other
21 Defendants, and is personally responsible in some manner for the acts and
22 omissions of the other Defendants in proximately causing the violations and
23 damages complained of herein, and have participated, directed, and have
24 ostensibly and/or directly approved or ratified each of the acts or omissions of
25 each of the other Defendants, as herein described.

FACTUAL ALLEGATIONS

15. At all times relevant herein, the City owned the public sidewalks and curbs in the City of Oakland, including the sidewalks and curbs in the neighborhood of Havenscourt.

16. At all times relevant herein, the City operated the public sidewalks and curbs in the City of Oakland, including the sidewalks and curbs in Havenscourt.

17. At all times relevant herein, the City was responsible for the maintenance of the public sidewalks and curbs in the City of Oakland, including the sidewalks and curbs in Havenscourt.

18. At all times relevant herein, the City owned, operated and/or maintained the public sidewalks and curbs on Avenal Avenue between Havenscourt Boulevard and Church Street.

19. At all times relevant herein, the City owned, operated and/or maintained the public sidewalks and curbs on Avenal Avenue between Havenscourt Boulevard and Church Street.

20. At all times relevant herein, the City owned, operated and/or maintained the public sidewalks and curbs on Flora Street between Havenscourt Boulevard and Church Street.

21. At all times relevant herein, the City owned, operated and/or maintained the public sidewalks and curbs on Havenscourt Boulevard between Flora Street and Avenal Avenue.

22. At all times relevant herein, the City owned, operated and/or maintained the public sidewalks and curbs on 67th Avenue between Flora Street and Avenal Avenue.

23. At all times relevant herein, the City owned, operated and/or maintained the public sidewalks and curbs on 68th Avenue between Flora Street and Avenal Avenue.

1 24. At all times relevant herein, the City owned, operated and/or
2 maintained the public sidewalks and curbs on Church Street between Flora
3 Street and Avenal Avenue.

4 25. Plaintiff resides on the 2100 block of Havenscourt Boulevard in
5 the neighborhood of Havenscourt in the City of Oakland, California.

6 26. Plaintiff has physical impairments resulting from a trauma to his
7 spine. Plaintiff has paralysis that significantly limits his mobility.

8 27. Plaintiff cannot walk and utilizes a wheelchair for mobility.

9 28. In order for Plaintiff to have full and equal access to and use of
10 public sidewalks and curbs, those facilities must be constructed in compliance
11 with federal and state accessibility standards.

12 29. Plaintiff frequents the Church Street Market (“Market”) located
13 at 1854 Church Street in the neighborhood of Havenscourt in the City of
14 Oakland, California several times a month to shop for necessities.

15 30. When Plaintiff visits the Market, he travels by wheelchair, as the
16 Market is conveniently located within one-third of a mile from his home.

17 31. When Plaintiff visits the Market, he travels by wheelchair, as he
18 does not have a car.

19 32. When Plaintiff visits the Market, he travels by wheelchair, as
20 there is no public transportation serving the location.

21 33. Whenever Plaintiff travels to the Market, or anywhere in
22 Havenscourt, he personally encounters accessibility barriers to the sidewalks
23 and curbs, most notably the lack of curb ramps at intersections.

24 34. There is no wheelchair accessible way to get from Plaintiff’s
25 home on the 2100 block of Havenscourt Boulevard and the Market without
26 encountering multiple uncut curbs and inaccessible conditions.

27 35. The uncut curbs and inaccessible conditions encountered by
28 Plaintiff include:

- a. Uncut curbs at the southeast, southwest and northwest corners of the intersection of Avenal Avenue and 67th Avenue;
- b. Uncut curbs at all four corners of the intersection of Avenal Avenue and 68th Street;
- c. Uncut curbs at the only two corners of the intersection of Avenal Avenue and Church Street;
- d. No way to access the strip of sidewalk fronting the Market due to broken pavement and gravel, a lack of curbs and a lack of connecting sidewalks on the south side of Church Street, across from the intersection of Avenal Avenue and Church Street;
- e. Uncut curbs at the only two corners of the intersection of Flora Street and Havenscourt Boulevard;
- f. Uncut curbs at the only two corners of the intersection of the intersection of Flora Street and 67th Avenue;
- g. Transitions at the only two corners of the intersection of Flora Street and 68th Avenue that lack smooth transitions due to excessive lips and ill-maintained concrete; and
- h. Uncut curbs at the only two corners of the intersection of Flora Street and Church Street.

Collectively, these shall be referred to herein as ‘the Barriers.’”

36. On multiple dates in the past six months, including June 28 and 30, 2019; July 2, 4, 7, 11, 16, 19, 27 and 30, 2019; August 2, 4, 12, 13, 20, 25, 28 and 31, 2019; and September 6, 7 and 8, 2019, Plaintiff personally encountered the Barriers.

1 37. The Barriers have caused, and continue to cause Plaintiff to
2 experience difficulty, discomfort, embarrassment, anxiety, fear, risk of harm
3 and inconvenience.

4 38. Among other things, the Barriers force Plaintiff to use steep
5 driveways to enter and exit the sidewalk and to ride his wheelchair in the street
6 along fast-moving vehicles in order to reach the Market and move around
7 freely in his neighborhood of Havenscourt.

8 39. Plaintiff has also had to rely on assistance from others to get to
9 the Market and other places in Havenscourt. Plaintiff has had to ask people to
10 lift his wheelchair on and off the sidewalk due to the absence of curb ramps.

11 40. On multiple additional dates in the past six months, Plaintiff was
12 deterred from using the sidewalks in Havenscourt and visiting the Market due
13 to the Barriers.

14 41. To this day Plaintiff continues to be deterred from using the
15 sidewalks in Havenscourt and visiting the Market due to the Barriers.

16 42. The Barriers continue to exist as of the filing of this Complaint.

17 43. Plaintiff and his mother have complained to the City
18 representatives about the Barriers to no avail.

19 44. On July 18, 2019, Plaintiff submitted a formal written request
20 through the City's curb and sidewalk repair program for the curbs along
21 Avenal Avenue to be cut so that he could reach the Market. Plaintiff noted in
22 his request that there was no accessible route to the Market.

23 45. Plaintiff received confirmation from the City that his request was
24 received, however the City has failed and/or refused to respond to or act on
25 the request.

26 46. On information and belief, there are additional access barriers on
27 the sidewalks and curbs in Havenscourt which, unless removed and/or
28 modified, will prevent and deter Plaintiff from visiting the Market and moving

1 freely in his home community. Plaintiff will seek to amend his Complaint once
2 these additional barriers are identified through a noticed site inspection.

3 47. On information and belief, the sidewalks and curbs in
4 Havenscourt have undergone construction and/or alteration since January 1,
5 1982, triggering applicability of California accessibility standards, California
6 Code of Regulations, Title 24. Plaintiff is informed and believes, and on that
7 basis alleges that Defendants have failed to comply with these standards.

8 48. On information and belief, the sidewalks and curbs in
9 Havenscourt have undergone construction and/or alterations since January 26,
10 1992 triggering applicability of ADA Standards for Accessible Design (36
11 C.F.R. pt. 1191, appxs. B and D; 28 C.F.R. pt. 36, subpart D). Plaintiff is
12 informed and believes, and on that basis alleges, that Defendants have failed
13 to comply with these standards.

14 49. Plaintiff plans and needs to access and use the sidewalks and
15 curbs in Havenscourt as they provide access to public accommodations and
16 goods and services in his community.

17 50. Until the above-described accessibility barriers are removed,
18 Plaintiff will continue to be denied full and equal access to the sidewalks and
19 curbs in Havenscourt, and will continue to suffer ongoing discrimination and
20 damage as a result.

21 51. The nature of Defendants' discrimination is ongoing and
22 continuous. Unless enjoined by this Court, Plaintiff will suffer ongoing and
23 irreparable injury.

24 52. Plaintiff has no adequate remedy at law because monetary
25 damages, which may compensate for past unlawful conduct, will not afford
26 adequate relief for the harm caused by the continuation of the wrongful
27 conduct of Defendants and the denial of Plaintiff's civil rights as herein
28 alleged. Accordingly, Plaintiff is entitled to injunctive relief.

GOVERNMENT CLAIM FILED

(With regard to claims for damages under California State Law)

53. Plaintiff timely filed a claim pursuant to § 910 et seq. of the California Government Code with the City on or about September 13, 2019.

54. As part of Plaintiff's claim, he requested that the Defendants remedy the accessibility barriers to the sidewalks and curbs in Havenscourt described herein.

55. The City has failed and refused to respond to or act on Plaintiff's claim. The claim is deemed rejected by the City as a matter of law.

FIRST CAUSE OF ACTION

Title II of the Americans with Disabilities Act

42 U.S.C. §12132 et seq.

56. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs.

57. Title II of the ADA provides in pertinent part: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

58. Plaintiff is, and at all times relevant herein was, a person with a "disability" within the meaning of the ADA. 42 U.S.C. § 12102.

59. The City is a public entity as defined by the laws of the State of California and has fifty (50) or more employees.

60. The City is, and at all times relevant herein was, a public entity within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1).

61. Provision and maintenance of the sidewalks and curbs in Havenscourt are a program, service, and/or activity of the City.

1 62. As a member of the public, Plaintiff meets the essential eligibility
2 requirements for the use of the City's public rights-of-way, including the
3 sidewalks and curbs in Havenscourt. Accordingly, Plaintiff is, and at all times
4 relevant herein was, a "qualified individual with a disability" within the
5 meaning of Title II of the ADA. 42 U.S.C. § 12131(2).

6 63. Defendants' acts and omissions as herein alleged have excluded
7 and/or denied Plaintiff the benefit and use of the sidewalks and curbs in
8 Havenscourt in violation of Title II and its implementing regulations.
9 Defendants' discriminatory conduct includes, *inter alia*:

- 10 a. Failing to operate the sidewalks and curbs so that they are
11 "readily accessible to and usable by individuals with
12 disabilities" (28 C.F.R. § 35.150(a));
- 13 b. Failing to design, construct and/or alter the sidewalks and
14 curbs in a manner such that they are readily accessible to
15 and usable by individuals with disabilities, when the
16 construction/alteration was commenced after January 26,
17 1992 (28 C.F.R. § 35.151);
- 18 c. Denying Plaintiff the opportunity to participate in or
19 benefit from the aids, benefits, or services offered by
20 Defendants to members of the public, on the basis of his
21 disabilities (28 C.F.R. § 35.130(b)(1)(i));
- 22 d. Affording Plaintiff an opportunity to participate in or
23 benefit from the aids, benefits, or services offered by
24 Defendants to members of the public that is not equal to
25 that afforded his non-disabled peers (28 C.F.R. §
26 35.130(b)(1)(ii));
- 27 e. Otherwise limiting Plaintiff in the enjoyment of any right,
28 privilege, advantage, or opportunity enjoyed by others

1 receiving its aids, benefits, or services (28 C.F.R. §
2 35.130(b)(1)(vii)); and

3 f. Utilizing methods of administration that have the effect of
4 subjecting Plaintiff to discrimination on the basis of his
5 disability (28 C.F.R. § 35.130(b)(3)(i)).

6 64. Under Title II of the ADA Defendants were required to conduct
7 a self-evaluation of its services, policies, and practices, and the effects thereof,
8 by no later than January 26, 1993. 28 C.F.R. § 35.105(a). On information and
9 belief, as of the date of the filing of this Complaint, Defendants have failed to
10 conduct a self-evaluation of the sidewalks and curbs in Havenscourt.

11 65. Under Title II of the ADA Defendants were required to develop
12 a transition plan setting forth the steps necessary to complete the structural
13 changes necessary to achieve program accessibility of the programs at the
14 Sidewalks within six months of January 26, 1992. 28 C.F.R. § 35.150(d)(1).

15 66. On information and belief, as of the date of the filing of this
16 Complaint, Defendants have failed to develop a transition plan setting forth
17 the steps necessary to complete the structural changes necessary to achieve
18 program accessibility of the sidewalks and curbs in Havenscourt.

19 67. Under Title II of the ADA, “[i]f a public entity has responsibility
20 or authority over streets, roads, or walkways, its transition plan shall include
21 a schedule for providing curb ramps or other sloped areas where pedestrian
22 walks cross curbs, giving priority to walkways serving entities covered by the
23 Act, including State and local government offices and facilities,
24 transportation, places of public accommodation, and employers, followed by
25 walkways serving other areas.” 28 C.F.R. § 35.150(d)(2).

26 68. On information and belief, as of the date of the filing of this
27 Complaint, Defendants have failed to develop a curb ramp schedule.

28 69. Under Title II of the ADA Defendants were required to remove

1 physical barriers that limit or deny people with disabilities access to its
2 services, programs and activities by no later than January 26, 1995. 28 C.F.R.
3 § 35.150(c).

4 70. On information and belief, Defendants have failed, since the
5 ADA was enacted and every year thereafter, to take appropriate measures to
6 remove barriers to the sidewalks and curbs in Havenscourt.

7 71. Under Title II of the ADA, Defendants were required to provide
8 curb ramps when streets or roads are altered through resurfacing. *See* 28
9 C.F.R. § 35.151(i)(1) (Newly constructed or altered streets, roads, and
10 highways must contain curb ramps or other sloped areas at any intersection
11 having curbs or other barriers to entry from a street level pedestrian walkway)
12 and § 35.151(i)(2) (Newly constructed or altered street level pedestrian
13 walkways must contain curb ramps or other sloped areas at intersections to
14 streets, roads, or highways).

15 72. On information and belief, Defendants have altered the streets in
16 Havenscourt through resurfacing since January 26, 1992 and have failed to
17 provide curb ramps concurrent with that alteration.

18 73. Title II of the ADA requires public entities to undertake barrier
19 removal as a “reasonable modification” in response to a request by, or on
20 behalf of, someone with a disability. 28 C.F.R. § 35.130(b)(7).

21 74. Defendant has violated the ADA by refusing to undertake barrier
22 removal (i.e., cutting the Curbs) as a “reasonable modification” in response to
23 multiple requests by Plaintiff.

24 75. Defendants’ duties under Title II of the ADA pertaining to the
25 accessibility of the sidewalks and curbs in Havenscourt are mandatory and
26 long-established. Defendants had knowledge of their duties at all times
27 relevant herein; their failure to carry out said duties as alleged herein was a
28 willful and knowing decision and choice, and/or the product of deliberate

1 indifference.

2 76. Defendants were provided actual notice of the barriers to the
3 sidewalks and curbs in Havenscourt; the impact those barriers have on
4 Plaintiff; and their duty to remove such barriers under Title II of the ADA.
5 Despite this notice, Defendants failed and refused to take any steps to remove
6 the barriers or otherwise address Plaintiff's concerns. Defendants' failures in
7 this regard constitute deliberate indifference.

8 77. Pursuant to 42 U.S.C. §§ 12133 and 12205, Plaintiff prays for
9 judgment as set forth below.

11 **SECOND CAUSE OF ACTION**

12 **California Disabled Persons Act**

13 **California Civil Code § 54 *et seq.***

14 **(Statutory Damages and Attorneys' Fees Only)**

15 78. Plaintiff re-pleads and incorporates by reference the allegations
16 contained in each of the foregoing paragraphs.

17 79. The California Disabled Persons Act ("CDPA") provides that
18 "[i]ndividuals with disabilities or medical conditions have the same right as
19 the general public to the full and free use of the streets, highways, sidewalks,
20 walkways, . . . and other public places." Cal. Civ. Code §54 (a).

21 80. The CDPA also provides that a violation of the ADA is a violation
22 of the CDPA. Cal. Civ. Code, § 54(c).

23 81. Any person or persons, firm, or corporation who denies or
24 interferes with an individual's rights under Section 54 or 54.1 is liable for each
25 offense. Cal. Civ. Code §54.3(a).

26 82. The sidewalks and curbs in Havenscourt are sidewalks,
27 walkways, and/or public places as contemplated by the CDPA.

1 83. As the public entity that owns, operates, controls and/or
2 maintains the sidewalks and curbs in Havenscourt, the City is obligated to
3 comply with the provisions of the CDPA.

4 84. The City is a person subject to California Civil Code section
5 54.3.

6 85. The City is a municipal corporation subject to California Civil
7 Code section 54.3.

8 86. Plaintiff is an individual with a physical disability within the
9 meaning of California Government Code Section 12926(m).

10 87. Defendants' acts and omissions, as herein alleged, have violated
11 the CDPA by denying Plaintiff full and free use of the sidewalks and Curbs.

12 88. Defendants' acts and omissions, as herein alleged, have also
13 violated the CDPA by denying Plaintiff's rights to equal access arising from
14 the provisions of the ADA (see Plaintiff's First Cause of Action).

15 89. Defendants' duties under the CDPA are mandatory and long-
16 established. Defendants are deemed to have had notice of their duties at all
17 times relevant herein yet failed and refused to take any steps to remove the
18 barriers to the sidewalks and curbs in Havenscourt. Treble damages are
19 warranted.

20 90. Defendants were also provided actual notice of the barriers to the
21 sidewalks and curbs in Havenscourt; the impact those barriers have had on
22 Plaintiff's access to and use of the sidewalks and curbs; and their duty to
23 remove such barriers under the CDPA. Despite this actual notice, Defendants
24 failed and refused to take any steps to remove the barriers to the sidewalks
25 and curbs. Defendants' failures in this regard were willful and knowing and
26 constitutes deliberate indifference, warranting an award of treble damages.

27 91. Pursuant to the remedies, procedures, and rights set forth in Cal.
28 Civ. Code § 54.3(a), Plaintiff prays for statutory damages and attorneys' fees

1 under Cal. Civ. Code § 54.3(a). *Note: Plaintiff is not invoking section 55 of*
2 *the California Civil Code and is not seeking injunctive relief under the CDPA.*

3
4 **PRAYER**

5 THEREFORE, Plaintiff respectfully requests that this Court enter
6 judgment in his favor against Defendants and award the following relief:

- 7 1. Issue an injunction pursuant to the ADA ordering Defendants to:
- 8 a. Take the steps necessary to bring the Sidewalks into compliance
9 with applicable federal and state accessibility standards and
10 make them fully and equally accessible to and usable by
11 individuals with mobility disabilities; and
- 12 b. Modify their policies to ensure compliance with new
13 construction and alteration standards and program accessibility
14 obligations moving forward.
- 15 2. Award Plaintiff general, compensatory, and statutory damages in an
16 amount within the jurisdiction of this court;
- 17 3. Award Plaintiff attorneys' fees, litigation expenses, and costs of suit, as
18 provided by law; and
- 19 4. Award such other and further relief as the Court deems just and proper.
- 20

21
22 Dated: November 7, 2019

Center for Disability Access

23 

24
25 By: _____
26 Amanda Seabock, Esq.
27 Attorneys for Plaintiff
28